Supreme Court, U. S.
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In the Supreme Court of the United States

October Term, 1978
No. 78-1636

WILLIAM A. GOICHMAN,
Petitioner

v.

THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

WILLIAM A. GOICHMAN,
In Pro Per

2040 Avenue of the Stars, 4th Fl.,
Century City, CA 90067

Murrelle Printing Co., Box 100, Sayre, Pa. 18840—(717) 882-0401

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, William A. Goichman, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania in the above cause.

OPINIONS OF THE COURTS BELOW

The order, without opinion, of the Supreme Court of Pennsylvania dated February 28, 1979, is attached hereto as Appendix A. The opinion and order of the Special

Disciplinary Court of the Court of Common Pleas of Philadelphia County, Commonwealth of Pennsylvania, dated June 26, 1978, sustaining the petition for discipline and ordering Petitioner to undergo a two year suspension from the practice of law, is attached hereto as Appendix B.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on February 28, 1979, meting out a two year suspension to Petitioner from the practice of law, commencing February 9, 1978.

The United States Supreme Court has jurisdiction to review judgments of the state courts in violation of the United States Constitution under 28 U.S.C. §1257 (3).

QUESTIONS PRESENTED

1. Were Petitioner's rights to due process under the Fourteenth Amendment to the United States Constitution violated where the Pennsylvania Common Pleas Court delayed 3 years 9½ months after the close of the record before issuing its order of a two year suspension commencing February 9, 1978?

2. Were Petitioner's rights to due process under the Fourteenth Amendment to the United States Constitution violated where the Pennsylvania Common Pleas Court sustained each of seven counts of unprofessional conduct, but the evidence to support some or all of said counts was lacking?

STATEMENT OF THE CASE

Petitioner was licensed as a member of the Bar of the Pennsylvania Supreme Court on April 17, 1956. He practiced law in the Commonwealth of Pennsylvania following his admission to practice.

On February 9, 1973, upon the Petition of William P. Stewart, Assistant Special Counsel for the Special Judicial Investigation, a three-judge Disciplinary Court, composed of three Common Pleas Court Judges of Philadelphia County, Judges Klein, Lagakos and Stern, was convened to hear the charges preferred. An answer was duly filed by Attorney William A. Goichman in response to said charges.

The matter came up for hearing on September 23, 24 and 25, 1974. The Assistant Special Counsel presented his case on the said three days and rested. Petitioner presented no evidence. The Court took the case under advisement.

In the meantime, in June 1975, Petitioner was convicted of income tax evasion and he was suspended from the practice of law in Pennsylvania from February 9, 1976 to February 9, 1978. Following the expiration of that suspension, Mr. Goichman applied for reinstatement to the Bar of Pennsylvania and, at his hearing for reinstatement on June 26, 1978, the Special Disciplinary Court on that self-same day coincidentally issued its decision in the within matter, sustaining the petition for discipline and imposing a two-year suspension, commencing from the date of its order, namely June 26, 1978.

An appeal was taken to the Pennsylvania Supreme Court, following the procedure provided for in such cases. Petitioner, through counsel, raised the constitutional issues of due process due to delay and lack of evidence.

Counsel for Petitioner filed an "Application for Relief" with the Pennsylvania Supreme Court in the form of a "Motion to Void Opinion and Order Suspending Petitioner from the Private Practice of Law for Two (2) Years for lack of Timely Disposition." A copy of said petition is attached hereto as Appendix C and made part hereof.

In that Petition, it was argued, *inter alia* (page 3):

> *"The Intolerable Delay in Reaching This Determination Demands the Order be Stricken.* The keystone of judicial change over the past decade has been in the area of demanding promptness and efficiency in the resolution of matters brought before tribunals. This Court has recognized the evils of untoward delay by handing down one of the strictest speedy trial rules in the United States of America. Appellate Courts across the nation recognize the right of an individual charged with an offense to a speedy disposition of the charges against him. . . ."

Following the said petition, Mr. Fitzpatrick, Counsel for Petitioner, filed a series of letters with the Pennsylvania Supreme Court amplifying his client's position. A reply was made by letter by the Disciplinary Board of the Pennsylvania Supreme Court of the Commonwealth of Pennsylvania. In Mr. Fitzpatrick's letter dated January 15, 1979 (page 3 of same), Mr. Fitzpatrick stated midway down the letter:

"The record indicates quite clearly a serious lack of any evidence. . . ."

On March 9, 1979, the Pennsylvania Supreme Court, without opinion, issued its order affirming and approving the findings of the Special Disciplinary Court and ordering a two year suspension commencing from February 9, 1978.

THE REASONS FOR ALLOWING CERTIORARI

The Supreme Court of Pennsylvania has decided a federal question of considerable substance in a manner which does not accord with applicable decisions of this Court.

The Supreme Court of Pennsylvania has held by its decision that a Disciplinary Court which took three (3) years, nine and one-half months after the hearings closed and the parties rested, and five (5) years, four months and seventeen (17) days after the petition for discipline was filed to render its decision, did not violate Petitioner's constitutional rights.

The Supreme Court of Pennsylvania by its decision also held that there was evidence to sustain each and every count of the seven counts contained in the Petition for Discipline.

The conclusions reached by the Pennsylvania Supreme Court are not in accord with the decisions of this Court in *Strunk v. U.S.*, 412 U.S. 434 (1973), and *Barker v. Wingo*, 407 U.S. 514 (1972), as made applicable to disciplinary proceedings, by such cases as *Spevack v. Klein*, 385 U.S. 511 (1967).

The conclusions reached by the Pennsylvania Supreme Court are not in accord with the decisions of this Court in *Thompson v. City of Louisville*, 362 U.S. 199 (1960), and *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957), requiring evidence to sustain a conviction.

Another, very important reason for allowing certiorari, is that petitioner is also a member of the Bar of this Court and the validity of the instant disciplinary proceeding affects his standing at the Bar of this Court.[1]

[1] A federal court need not, and should not, recognize a state disciplinary order where there was a denial of either procedural or substantive due process. *In re Ruffalo*, 390 U.S. 544 (1968).

ARGUMENT

I. Where the State Court Took Three Years and Nine and One Half Months After the Record Closed To Render Its Decision in a Lawyer Disciplinary Proceeding, Petitioner's Rights of Due Process Were Violated

The petition for discipline was filed February 9, 1973. Hearings were held September 23, 24, 25, 1974, and on the last day of same the special prosecuting attorney rested his case. Petitioner presented no evidence and the hearings were closed. The Court took the matter under advisement. On June 26, 1978, the special Disciplinary Common Pleas Court issued its decision, sustaining the charges and ordering a two (2) year suspension commencing June 26, 1978. On appeal to the Pennsylvania Supreme Court, the findings were approved and affirmed, but the date of commencement of the two year period was readjusted to February 9, 1978 to February 9, 1980.

There can be little doubt that if the instant matter were a criminal case, the lapse of three years, nine and one-half months after the close of hearings, and lapse of five years, four months from the date of the Petition for Discipline, would constitute a violation of the Fourteenth Amendment to the United States Constitution which incorporates the Sixth Amendment therein. *Barker v. Wingo* and *Strunk v. U.S.*, supra.

Klopfer v. State of North Carolina, 386 U.S. 213 (1967), made the Sixth Amendment applicable to the

states. Judgment and sentence are considered part of the trial: *Pollard v. U.S.*, 352 U.S. 354, 361 (1957); *U.S. ex rel. Giovengo v. Maroney*, 194 F. Supp. 154 (W.D. Pa. 1961); *Smoker v. Russell*, 218 F. Supp. 899 (M.D. Pa. 1963).

This Court has held:

> "When a State seeks to . . . disbar [or discipline] a lawyer, it must proceed according to the most exacting demands of due process of law." *Law Students Civil Rights Research Council, Inc. v. Wadmond*, 401 U.S. 154 (1971).

What rights apply to a lawyer in a disbarment proceeding has not been clearly or fully defined, but rather has been left to be decided upon on an ad hoc basis.

This Court has held that the right against self-incrimination does apply. *Spevack v. Klein*, 385 U.S. 511 (1967).

This case presents the issue whether the dictates or demands of the Sixth Amendment are incorporated into the Fourteenth Amendment for purposes of Bar Disciplinary Proceedings. We submit it does.

But even if it does not, there is another principle at work which would afford therapeutic relief, that is the "shock the conscience" rule enunciated in such cases as *Rochin v. California*, 342 U.S. 165 (1952). See also *Petition of Provoo*, 17 F.R.D. 183 (D. Md. 1955), aff'd 350 U.S. 857 (1955). In the *Rochin* case a person's stomach was pumped for evidence. While the Court had not then held that unreasonable seizure of evidence can be barred from use in a state court proceeding, the Court did hold

in that case that when the Court's conscience is shocked, the Court will bar such evidence. Later decisions did make the exclusionary rule fully applicable to state proceedings.

Therefore, the delay here may be struck down on the ground that it "shocks the Court's conscience," obviating the necessity of applying the parameters of the Sixth Amendment.

Chief Justice Warren E. Burger at the ABA Mid-Year Meeting on February 11, 1979 in Atlanta stated:

> "We all share a common desire to deliver justice with dispatch. The concept of a speedy trial is almost an article of faith."

In *United States v. Marion*, 404 U.S. 307, 320 (1971), the Court stated that delay may "seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends."

In *Strunk v. United States*, 412 U.S. 434, 439, the Court observed: "The speedy trial guarantee recognizes that a prolonged delay may subject the accused to an emotional stress that can be presumed to result in the ordinary person from uncertainties in the prospect of facing public trial or of receiving a sentence longer than, or consecutive to, the one he is presently serving—uncertainties that a prompt trial removes. Smith v. Hooevy, 393 U.S. at p. 379, 89 S.Ct. at 577, 578; United States v. Ewell, 383 U.S. 116, 120 (1966)."

The Court, we respectfully submit, should find that the delay involved herein, unexplained and without any justification, did not "accord" with "most exacting demands of due process of law."

There is no case directly on point. Moreover, it should be pointed out that cases involving a delay by the client in filing a complaint with the State Bar, or cases where the issue was not brought up, are not in point. Furthermore, even in those cases where delay was discussed, the parameters of the Sixth Amendment were not brought to bear.

Prejudice is defined in the cases as consisting of a drain of financial resources, curtailment of associations, subjection to public obloquy, creation of anxiety, emotional stress and the loss of the right to have a prompt or concurrent sentence imposed.

Certainly, all these things and more were present as a result of the Disciplinary Court delaying its decision for almost four (4) years. Moreover, the delay from the filing of the petition to the hearing (February 1973 to September 1974) is not to be thought of as being condoned. However, that delay pales when considered with the gross delay following the close of the evidence.

It should also be pointed out that when the Petition for Discipline was filed in February, 1973, an article appeared in the newspapers in Philadelphia casting Petitioner in a very unfavorable light. A copy of that article appears at the end of the Appendix attached hereto. This publicity added public opprobrium to the emotional stress. Prejudice in every sense of the word, assuming that were needed, has been fully demonstrated.

II. Where There Was No Evidence as to Some or All of the Charges, Petitioner-Lawyer Was Deprived of Due Process of Law

This Court has held that a conviction without evidence offends due process. *Thompson v. City of Louisville*, 362 U.S. 199 (1960); *Vachon v. New Hampshire*, 414 U.S. 478 (1974); *Harris v. U.S.*, 404 U.S. 1232, 1233 (1971); *Johnson v. Florida*, 391 U.S. 596 (1968). Cf. *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957).

The statements and conclusions of the Trial Court in its opinion are not based upon valid proofs in the record, but rather upon a reticulated web of hypotheses and conjectures.

Several instances will suffice. Charge III concerned client Gunther Halcsin. Mr. Halcsin, the only percipient witness on this charge, testified that he saw the doctor treating him for injuries sustained in an automobile accident, 3 or 4 times, whereas the doctor submitted a bill to Mr. Goichman for 20 visits. The prosecutor never called the doctor to testify. The client, by whom the prosecutor is bound, testified that he *never* discussed the number of visits with the doctor with Mr. Goichman. Yet, the Trial Court concluded that Mr. Goichman "knew of, and participated with the doctor, in making the inflated and fraudulent medical claim."

Mr. Halcsin was asked by the prosecutor (N.T. Sept. 25, p. 39):

> "Q. Before your bill was settled, did you ever sit down with Mr. Goichman and discuss your injuries and number of visits?

A. No, I didn't."

The prosecutor further asked: (N.T. 46).

"Q. Did you ever have any discussion with Mr. Goichman about your visits to the doctor before your case was settled?

A. No, I didn't.

Q. Did you discuss that subject at the time you received your money?

A. Not to my recollection. At the time of settlement he told me what the doctor bill was and that was it. . . ."

Judge Lagakos (the writer of the opinion for the Court), then asked:

"Q. You knew there was something wrong when he told you the amount of the bill. Did you tell Mr. Goichman you only went one or two times?

A. I told him that. He showed me the paper and he said this is what you got, this is the money. He didn't show me the bill.

Q. My question is, did you ever tell Mr. Goichman that you only went two or three times?

A. *I don't think I did, Your Honor.*"

It was also brought out that the witness had said under oath previously that he had been to the doctor seven or eight times, in a unilateral meeting with the prosecutor (N.T. 52-53). It was also brought out that Mr. Halcsin had told the insurance company doctor that he had visited the office of Dr. Moss from the date of the accident, March 21st, 1970, to August, 1970 once a week and occasionally twice a week, thereby giving a consistent picture of the medical bill (N.T. 72).

Nevertheless, regardless of how many times Mr. Halcsin did in fact go to Dr. Moss, the fact remains he never told this to Mr. Goichman and there was no evidence that Mr. Goichman ever knew differently.

The witness was asked again by Goichman's counsel:

"Q. You never told Mr. Goichman the true number of visits?

A. No, I didn't." (N.T. 51)

The prosecutor, the Trial Judge, and counsel for respondent all asked Mr. Halcsin the same question, whether he had ever discussed the number of visits he made to Dr. Moss with Mr. Goichman and each time the witness said no.

Incidentally, the doctor was not called by the prosecutor. No other evidence was presented to show that Mr. Goichman had information before he submitted Mr. Halcsin's medical bill that it was false. Yet the Trial Court makes the gravest findings against Mr. Goichman on this count!

There was no proof that Mr. Goichman had any other "cases" with the doctor. Apparently, the Court infers such highly ignominious conclusions from the fact that Mr. Goichman had referred the client to the doctor. This, of course, is absurd! It is respectfully submitted that this charge was blatantly unsupported.

In Charge II, the client, Edward Manigo, was recommended to, and brought to, Mr. Goichman's office by an "unidentified policeman." Based upon this, the Court found Mr. Goichman guilty of unprofessional solicitation.

There was no evidence that Mr. Goichman had in any way aided or abetted in urging or encouraging this "unidentified policeman" to recommend or bring him clients.

The Trial Court based its stigmatizing conclusion on the fact that Mr. Manigo saw Mr. Goichman in his office give the "policeman" a "piece of paper," which he did not identify or know what it was, notwithstanding the Trial Court's imagination that it resembled a check. Moreover, there was no evidence as to what this paper was, and if it were a "check" what it was for, what it contained, how it read. It could have been made out to the Police Fraternal Organization or the Policeman's ball or a myriad other things!

Mr. Manigo testified that a policeman investigating his accident recommended Mr. Goichman as his lawyer and several days after the day of the accident, took him to Mr. Goichman's office. Mr. Manigo said he went because he "might give me the right lawyer" (N.T. Sept. 24, p. 17).

Mr. Manigo testified that the officer brought him to Mr. Goichman's office in civilian clothes. Mr. Manigo further testified:

> "A. Him and Mr. Goichman stepped aside and they had some talk and I see Mr. Goichman give him a piece of paper or something and me and him walk on down.
>
> Q. Were you able to identify the paper?
>
> A. No., I didn't pay it that much attention, to tell you the truth." (N.T. 20-21)

Then Judge Lagakos (the writer of the Opinion for the Court) asked:

> "Q. Let me ask you, Mr. Manigo, you said you saw Mr. Goichman give to the officer exactly what, would you describe that?
>
> A. Just a white piece of paper, I would say a check or anything, but I can't identify it as no check; I wouldn't say no check definitely."

Although the burden of proof is placed upon the prosecutor to present competent and sufficient evidence which is clear and convincing, the Trial Court found this evidence, which is no evidence at all, sufficient to support a finding of a "check", sufficient to support the inference that the "check" was made out to the officer, sufficient to support the inference that the money was given in return for bringing in the client, and sufficient to infer that all of this had been pre-arranged, and thus constitute unlawful solicitation.

To take away a lawyer's right to practice law, due process requires "evidence"!

Mr. Manigo was also allowed to testify to a conversation with the officer which took place after he left Mr. Goichman's office. Mr. Manigo testified that the officer had said to him, cryptically, "this is the way I make mine" (N.T. 21). There was no explanation of what this cryptic phrase meant. Did it mean that the officer derived his mental satisfaction this way, or that he was doing Mr. Goichman a good turn for doing good things for him, or, this was his good deed for today, or what?

Mr. Rose (Goichman's counsel) objected to this testimony as being pure hearsay; Mr. Stewart agreed that the statement could not be accepted for its truth but argued that it was relevant in helping to prove the act of solicita-

tion (N.T. 22). The statement itself had no meaning and Mr. Stewart's argument was casuistic.

Judge Klein (acting as the Presiding Judge) stated that the Court would receive it and rule upon it later (N.T. 22). The Court never did rule on it later.

It appeared on cross-examination that the client was dissatisfied with Mr. Goichman because the case had not been settled.

The Court asked Mr. Stewart whether he was able to identify the police officer involved. He said (N.T. 23): "We think we have identified that officer with the records. I have them right here, but as far as that officer being helpful to me, he is not, sir. That is what it was."

Mr. Stewart never produced any oral or written statements from such officer to Mr. Goichman or his counsel which would have, doubtless, been helpful to Mr. Goichman, notwithstanding the implications of the *Brady* rule.

The client also testified to a 100% hearsay statement, made out of Mr. Goichman's presence, to the effect that when he was being driven home by the policeman, the policeman said, "this is how I make mine." There was no explanation given by anybody as to what this was supposed to mean or refer to. The expression "how I get mine" denotes nothing. It could have meant, "this is how I get my personal satisfaction," or "this is my good deed for today," or a million other possibilities. The fact that the statement was pure hearsay and inadmissible evidence itself should have eliminated the garbled words to begin with.

It should also be pointed out that the Trial Court saw something sinister in the fact that Mr. Goichman, not

knowing who had referred the case to him, wrote to the client and asked the client to supply to him the name and address of the referrer or recommender, so he could report it on papers filed with the court. The Trial Court concluded that Mr. Goichman in doing this was trying to "cover up" something. This was a most absurd conclusion!

A lawyer is entitled to count policemen among his friends. There is nothing improper in having such a person refer him a case or bring him a client, so long as it is done by the policeman on his volition without express encouragement or understanding with the lawyer.

What we then have here is that the Trial Court first "imagined" that the piece of paper was a check; the Trial Court next imagined that the "check" was a written order for the payment of money to this "unidentified policeman." The Trial Court next imagined that the "check" was given as a *quid pro quo* for bringing in Mr. Manigo, and, hence, the Trial Court concluded there was a pre-arrangement between the lawyer-petitioner and the "unidentified policeman" and, hence, unprofessional solicitation.

A lawyer has a right to be condemned by proper evidence. What we have here is a conviction without evidence, based upon a loose string of conjectures tied together with imaginative stitching.

This petition will not belabor the other five charges, each in the same amorphous category. Hopefully, enough has been shown to remove the presumption normally attendant upon conclusions of the Trial Court from the solid bedrock of evidence to the gossamer zephyrs of the air. The same oblique reasoning was applied to the other counts. If what Mr. Goichman did in the Halcsin and

Manigo cases amounts to "fraud" and "unprofessional conduct", then half the Bar would be guilty of the same accusations.

It may thus be apparent why the Trial Court waited for almost four years before deciding the matter and why it issued its decision on the very day that petitioner was applying for reinstatement, a weapon in reserve, as it were. This may also explain why the Pennsylvania Supreme Court did not detail the evidence.

It may be assumed that the two year suspension resulting in this case was based upon proof of all seven counts and that the elimination of one or more counts would reduce or eliminate the suspension imposed.

It is, therefore, respectfully submitted that some or all of the charges were totally unproven and the judgment of the Supreme Court of Pennsylvania should be reversed for this reason.

CONCLUSION

Certiorari should be granted in this case to correct the glaring injustice created by the decision of the Court below. The egregious delay from the filing of the petition (5½ years and 4 years from the close of hearings) must be regarded as "shocking the conscience" of the Court.

Secondly, the evidence upon which the Trial Court based its findings of fact and conclusions of law was no

more than a reticulated web of conjecture and speculation spun out of a disjointed and garbled collection of bits and pieces.

Wherefore, it is respectfully requested that this Petition for Certiorari be granted and that this matter be set down for plenary consideration or judgment reversed based upon the Petition and opposition papers filed in this matter.

Respectfully submitted,

WILLIAM A. GOICHMAN,

In Pro Per, Petitioner

APPENDIX "A"

IN THE SUPREME COURT OF PENNSYLVANIA
In and For the Eastern District
Transferred to No. 233, Disciplinary Docket No. 1, From Appeals Docket No. 275 January Term, 1978

RE: WILLIAM A. GOICHMAN
APPEAL OF: WILLIAM A. GOICHMAN

Appeal from the Order entered 6/26/78, Court of: Disciplinary Court of Common Pleas for the County of Philadelphia

No. D-26 February Term, 1973

June 27, 1978—Notice of Appeal Docketed.

November 2, 1978—Application for Relief.

February 28, 1979—ORDER.

The order and findings of the Special Investigating Panel are approved and affirmed. The order directing suspension from the practice of law is affirmed but it is directed that the suspension date be effective as of February 9, 1978. Mr. Goichman may file an application for reinstatement with this Court's Disciplinary Board after August 2, 1979.

By the Court.

Order of Supreme Court

Mr. Justice Roberts does not join the Order of the Court and would make the two-year period of suspension imposed effective from the date of this Order rather than, as the Court directs, from February 9, 1978—a date thirteen months ago.

True Copy From Record

In Testimony Whereof, I have hereunto set my hand and the seal of said Court, at Philadelphia, this Eighth day of March 1979.

(s) Catherine E. Lyden
Deputy Prothonotary. (Seal)

Opinion and Order of Court of Common Pleas

APPENDIX "B"

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

No. D-29 February Term, 1973

IN THE MATTER OF WILLIAM A. GOICHMAN

OPINION AND ORDER

Before Klein, J., Stern, J. and Lagakos, J.

Opinion—William A. Goichman, Lagakos, J.

This matter is before the Court for consideration of a Petition for Imposition of Discipline of Respondent, William A. Goichman, a member of the Philadelphia Bar. An Answer was filed and, in addition, Respondent filed several pretrial motions which have already been disposed. The pretrial applications included request for copies of statements and depositions which were given to Respondent.

The matter proceeded to a hearing before this Court at which testimony was taken. After a review of the evidence and a careful consideration of the entire record and the applicable law, we are convinced that the prayer of the Petition should be granted and the Respondent should be disciplined.

The Petition for Imposition of Discipline charges Respondent with seven counts of unethical conduct including solicitation of personal injury claims, prosecuting inflated and fraudulent medical claims in personal injury cases and submitting false information to the Common Pleas Court. The standard of proof for discipline proceedings was established by *Krehel Appeal*, 419 Pa. 86 (1965) which held that the proof must be by a preponderence of evidence, which must be clear and satisfactory. The following summary of the evidence convinces us that the charges have been sustained.

The Arnold Case: Charge I, Solicitation, Charge VI, Filing False Retainer Agreement.

Raymond Arnold testified that on January 29, 1969 his father fell on a City sidewalk under the control of the Redevelopment Authority. He died soon after the fall and one week later an unidentified man came to the Arnold house and spoke to the Arnold family about retaining Respondent Goichman to make a claim in connection with Mr. Arnold's accident. This man made a second visit to the Arnold home and had the Arnolds sign a contingent fee agreement for Respondent. The Arnolds did not know Respondent before the solicitor's visit and had done nothing to request his or any other lawyer's services. Raymond Arnold testified that on a subsequent visit to Respondent's office he saw the solicitor in the office. Raymond Arnold's testimony was substantially corroborated by the testimony of Susan Arnold, his mother.

Respondent filed a copy of the retainer agreement with the Prothonotary on which it was stated that he was

referred to the Arnolds by "friends". This statement is false and as such is evidence of unethical solicitation.

The Manego Case: Charge II Solicitation

Edward Manego testified that he was injured while riding a SEPTA bus which was involved in an accident on September 26, 1970. He was taken from the accident scene with other injured passengers to the Women's Medical Hospital by the Philadelphia police. While waiting in the hospital emergency room with the other passengers, one of the policemen volunteered to Manego and the other passengers that Respondent Goichman, if retained, "could get the best money you can get". Manego testified that he had not known of Respondent and had no intention of making a claim before being solicited by the policeman.

After leaving the hospital, Manego did nothing to communicate with Respondent. The following day, however, he received a telephone call from the policeman who arranged to take Manego to Respondent's office the next day. Manego was driven to Respondent's office by the policeman in his private automobile and was introduced to Respondent. Manego agreed to retain Respondent on this occasion. He testified that while in Respondent's office he saw Respondent give the policeman a paper which by description could have been a check. The policeman then drove Manego to his home and during the trip told Manego "this is how I make mine", implying that he received something for referring the case to Respondent.

Respondent filed with the Prothontary on March 1, 1972 a copy of a contingent fee agreement with Manego dated February 11, 1972. On this filed copy were written

the words, "Does not Remember" in the section calling for the name and address of the person who referred the client to Respondent. We note that the retainer agreement was filed over a year after Respondent had been retained and that Respondent was not charged with filing a false retainer. At the hearing, however, counsel for Respondent introduced a copy of a letter from Respondent to Manego which corroborates Manego's testimony and convinces us that Respondent not only knew of the solicitation but deliberately attempted to conceal it by filing the above-mentioned copy. We refer to Respondent's exhibit No. 4 which is a letter dated February 8, 1972 on Respondent's stationery signed by him, and addressed to Manego. The letter requests Manego to sign and return a contingent fee agreement and to state who referred him to respondent. On the letter which was apparently returned to Respondent there was written the following:

> "I was brought into your office and introduced to you by a friend of yours, a police officer. Please return duplicate copy to me."

Manego testified that he had not written the words quoted above, did not recognize the handwriting to be his wife's and had no knowledge of his wife making the reply. Further checking with his wife it was proven by way of stipulation that Manego's wife had made the reply. We view this attempted impeachment of Manego's testimony as insignificant in view of the other evidence and especially the fact that her reply corroborates Manego's testimony that he was solicited by the policeman.

As noted, Respondent was not charged with filing false retainer agreement in the case and we make no finding in this regard. The evidence that a false retainer agreement was filed is relevant, however, to the solicitation charge and is considered by us as evidence of Respondent's knowledge of, and participation in the unethical solicitation of Manego's case.

Halcsin Case: Charge III, Fraudulent Medical Claim.

Gunther Halcsin testified that he was involved in an automobile accident on March 13, 1970, and retained respondent Goichman to make a claim against the responsible party. He was "shaken up a little bit", but did not go to a hospital or a doctor for treatment on his own. After retaining Respondent, Respondent referred Halcsin to Dr. Herbert Moss Halcsin saw 3 or 4 times. Halcsin told Respondent that he was not seriously injured and had not received any medical attention on his own. Halcsin visited Respondent's office on 2 occasions, once for the initial interview and again after the case was settled on March 20, 1972.

Halcsin testified that he did not receive a bill from Dr. Moss and had no knowledge of the amount of the bill until after the case was settled and he was called to Respondent's office to receive his share of the recovery. It is clear that Halcsin's medical expenses and treatment were not reviewed with him by Respondent before the case was settled. The record indicates that Respondent obtained the doctor's bill for $215 for 20 visits and his treatment report directly from the doctor and then submitted them to the responsible party. It is clear to us that Respondent knew of, and participated with the doctor in making the inflated and fraudulent medical claim.

The Roger and Doris Lindsay Case: Charge IV, Fraudulent Medical Claim, Charge V, Fraudulent Medical Claim.

Respondent was retained by Roger and Doris Lindsay to prosecute a personal injury case arising out of an automobile accident on December 12, 1969. Roger Lindsay and his mother, Doris, each testified that they had suffered only minor injuries in the accident and had not received any medical attention prior to meeting with Respondent to retain him. Each was referred to Dr. David Cramer by Respondent. They each testified that they saw Dr. Cramer two times.

In this case, Roger and Doris Lindsay testified in a pre-settlement deposition that they had each seen Dr. Cramer 17 times. They also signed Answers to Interrogatories containing the same false information. They admitted in the hearing before us that they had testified falsely in the deposition and signed the false Answers to Interrogatories at the direction of Respondent. Mrs. Lindsay also testified at Respondent's direction she testified falsely in the deposition that a fictitious person named "Dayton" had referred her to Dr. Cramer. In this case also the doctor's bills and reports were sent directly to Respondent by the doctor. From all the evidence presented we find that Respondent knew of and participated in the inflated and fraudulent medical claim against the responsible party.

The Barbara Penn Case: Charge VIII, Prosecuting Unauthorized Claim, Solicitation and Fraudulent Medical Claim.

The evidence in this case included the testimony of seven witnesses and written records submitted by Petitioner

and Respondent. Because of the extensive evidence, we cannot review it in detail. We are satisfied that the charges are sustained and find respondent guilty of shocking unethical conduct in the handling of this case.

Briefly, the evidence shows that Barbara Penn was a passenger in an automobile driven by Barbara Coston which was involved in an accident on June 13, 1969. Barbara Penn was not injured in the accident, did not seek any medical attention and did not retain or authorize Respondent to make a claim against the responsible party. Barbara Coston did retain Respondent who, without authority, included the claim of Barbara Penn in his dealings with the responsible insurance carrier.

Respondent falsely represented to the insurance carrier that Mrs. Penn had been treated by two physicians, both of whom testified that they had never treated Barbara Penn and had no communication whatever with Respondent concerning Barbara Penn. Each physician testified that he never authorized Respondent to use his name as a treating physician in the Penn case. The evidence is clear, however, that Respondent represented to the insurance carrier that each physician had treated Mrs. Penn and that the bill of one of the doctors was $60. Respondent fabricated this entire medical claim including representations concerning Mrs. Penn's injuries. Respondent then negotiated a settlement of Barbara Penn's case for $350 based on his fraudulent representations.

After concluding the settlement, respondent went to Mrs. Penn's house and prevailed upon her to sign the release. He then received the settlement check and again attempted to get Barbara Penn to go along with the fraudu-

lent scheme by endorsing it. She refused, and reported the scheme to the responsible party which resulted in a stop payment order being placed on the check. Respondent thereafter presented the check for payment with the forged endorsement of Barbara Penn. We infer from the evidence that Respondent forged the endorsement himself or was directly responsible for it.

SUMMARY

In summary, the evidence in these cases presents a melancholy record of unprofessional conduct in violation of the Code of Professional Responsibility. Without question, Respondent's conduct was utterly reprehensible and must be severely condemned. We find him guilty of each of the seven counts in the Petition for Imposition of Discipline. Under all the circumstances and after painstaking consideration, we have determined that Respondent shall be suspended from the practice of law for two (2) years.

Therefore, and in accordance with all of the foregoing, we enter the following

ORDER

AND NOW, this 26th day of June, 1978, it is ORDERED and DECREED that

(1) Respondent shall be suspended from the practice of law for two (2) years from the effective date of this Order.

(2) Respondent shall comply with the Rules of Disciplinary Enforcement of the Supreme Court of Pennsylvania pertaining to suspension.

Klein, J. concurs in the result.

(s) C. Klein
J.

(s) Stern
J.

(s) Lagakos
J.

Certified Copy
from the record in the

OFFICE OF THE PROTHONOTARY
284 City Hall
Philadelphia, Pa. 19107

I DO HEREBY CERTIFY that the attached photostat is a true and correct copy of the Final Decree in the within-entitled case on file in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the said Court this 26th day of JUNE A.D., 19 Seventy-Eight.

JOHN J. PETIT Jr.
Prothonotary

By (s) S. Merkest

(Seal)

APPENDIX "C"

IN THE SUPREME COURT OF PENNSYLVANIA

No. 275 January Term 1978

IN THE MATTER OF WILLIAM A. GOICHMAN

APPLICATION FOR RELIEF

Motion to Void Opinion and Order Suspending Petitioner from the Private Practice of Law for Two (2) Years for Lack of Timely Disposition.

F. EMMETT FITZPATRICK, ESQUIRE
3131 Centre Square West
Philadelphia, PA 19102

I.D. No. 03901
(215) 568-2700

Attorney for Petitioner

IN THE SUPREME COURT OF PENNSYLVANIA

No. 275 January Term 1978

IN THE MATTER OF WILLIAM A. GOICHMAN

APPLICATION FOR RELIEF

---

1. This Court has jurisdiction over this matter by reason of Section 202 of the Act of July 31, 1970 (P.L. 673, No. 223) known as the Appellate Court Jurisdiction Act of 1970 (17 Pa.C.S. 211.202 (6)).

2. This Application is filed under Rule 123 of the Rules of Appellate Procedure seeking relief not otherwise provided for in the Rules for reasons clearly evident upon the face of the record.

3. In September of 1974, a hearing was held by a Special Investigation Panel of the Court of Common Pleas upon a Petition for Imposition of Discipline against William A. Goichman on February 9, 1973.

4. Notice that a Petition was filed was made public and appeared in the local press on February 16, 1973. This article outlined the nature of the charges against Mr. Goichman.

5. Testimony was concluded in September of 1974 and no further action was taken regarding this matter. The Hearing Committee took the matter under review.

6. The applicant strongly disputes the findings of fact and conclusions of law reached by the Special Investigation Panel.

7. On June 26, 1978, some 44 months later, the Panel handed down an Order suspending Mr. Goichman from the practice of law for two years.

8. No explanation was ever given for the delay and none exists today.

WHEREFORE, Petitioner prays that the Opinion and Order of the Court of Common Pleas of the First Judicial District of Pennsylvania dated June 26, 1978 suspending him from the practice of law for two years effective from the date of that Order be stricken.

(s) F. Emmett Fitzpatrick
F. Emmett Fitzpatrick

IN THE SUPREME COURT OF PENNSYLVANIA

No. 275 January Term, 1978

IN THE MATTER OF WILLIAM A. GOICHMAN

MEMORANDUM OF LAW

William A. Goichman was graduated in the class of 1955 by the University of Pennsylvania Law School. He was admitted shortly thereafter to practice in the Courts

here in the Commonwealth of Pennsylvania. He served as President of the Philadelphia Trial Lawyers and was a member of the Bar Association's Board of Governors.

In October of 1971, a Special Judicial Investigation was conducted by the Court of Common Pleas of Philadelphia County into the practice of certain attorneys dealing primarily in negligence cases. On February 9, 1973, this investigation filed a petition for imposition of discipline against Mr. Goichman, charging him with seven specific counts of solicitation, filing of false retainer agreements, fraudulent medical claims and prosecuting an unauthorized claim. This petition itself was made public and subsequently appeared in *The Philadelphia Daily News* on Friday, February 16, 1973. Judge Jamieson, who was generally supervising this inquiry at that time, apparently believed that the filing of the petition was not covered by the confidentiality rules. At some later point in time, he changed his mind, but as far as Mr. Goichman was concerned, the public was notified in February of 1973 that he was charged with seven counts of unlawful conduct as a result of his negligence practice.

In September of 1974, a hearing was held before the Honorable Charles Klein, the Honorable Gregory Legakos and the Honorable James L. Stern regarding this petition and testimony was concluded in that same month. No further evidence was taken beyond the Fall of 1974.

In June of 1975, Mr. Goichman was convicted of income tax evasion for the years 1968 and 1969 by a jury in the Eastern District of Pennsylvania. He was fined $8,000 on each count. He was not ordered imprisoned, nor was he placed upon probation. As a result of that con-

viction, Mr. Goichman was ordered suspended on February 9, 1976 by the Pennsylvania Supreme Court for two years, retroactive to February 9, 1976. It's interesting to note that the Disciplinary Board recommended only that Mr. Goichman be suspended for nine months, but the Supreme Court increased this term to two years.

Mr. Goichman applied for reinstatement at the Bar of Pennsylvania and a hearing was held on June 26, 1978 before the Hearing Committee upon that request. At that time, for the very first time, the Opinion and Order of the Inquiry Committee which had concluded all testimony in September of 1974, was handed down. It ordered Mr. Goichman suspended from the practice of law for a two year period effective the 26th day of June, 1978.

Mr. Goichman is presently located in California and is applying for reinstatement to the Bar of that State. These proceedings vitally affect his future practice in that location.

THE INTOLERABLE DELAY IN REACHING THIS DETERMINATION DEMANDS THAT THE ORDER BE STRICKEN.

The keystone of judicial change over the past decade has been in the area of demanding promptness and efficiency in the resolution of matters brought before tribunals. This Court has recognized the evils of untoward delay by handing down one of the strictest speedy trial rules in the United States of America. Appellate Courts across the nation recognize the right of an individual charged with an offense to a speedy disposition of the charges against him. The new rules of disciplinary enforcement which admittedly were not in effect at this time require that matters be disposed of within a specified period of time.

Much of the unfortunate litigation surrounding the speedy trial requirement deals with justification for delay. It is noted in this instance that a mere reading of the Opinion and Order attached to this application shows no excuse for any delay, let alone a delay of 44 months between the close of testimony and the Order. There are no complex legal issues. There is no involved discussion of the law. There is a simple finding of credibility on behalf of the people who testified and the rather obvious conclusions that flowed immediately therefrom.

The injustice of delay is magnified when the nature of the punishment imposed by the Hearing Committee is analyzed. The Committee felt that two years' disbarment was sufficient punishment for the nature of the charges it found to exist against Mr. Goichman. Had that penalty been applied retroactively to the imposition of the disciplinary petition, it would have expired in February of 1975. Had it been applied immediately upon the conclusion of testimony in the Fall of 1974, it would have expired in the Fall of 1976. To allow not only the disposition to go completely unattended, but the penalty imposed to build upon that lack of attention magnifies tremendously the effect upon the Petitioner.

Clearly the practice of law requires that the public be able to rest its confidence in a system that will properly discipline lawyers. But a proper discipline must be a prompt discipline. Nothing about the delay in this instance supplies anything but a complete lack of confidence in the ability of the legal profession to properly police itself.

It is not as though Mr. Goichman is escaping punishment. He has been deprived of his right to practice law here in Pennsylvania since February 9, 1976. This punishment when viewed in relation to the total cumulative charges against Mr. Goichman is clearly sufficient. The attempt by the Disciplinary Committee to enlarge the scope of this punishment by building it upon its unexplained and unconscionable delay adds an intolerable injustice to the disciplinary system. Mr. Goichman respectfully requests this Court to void the Order of June 26, 1978 without further proceedings.

Respectfully submitted,

(s) F. Emmett Fitzpatrick
F. Emmett Fitztpatrick

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which satisfies the requirements of Pa. R.A.P. 121.

Service by first class mail addressed as follows:

William P. Stewart, Esquire, Assistant Special Counsel, Special Judicial Investigation, 1526 Chestnut Street, Philadelphia, PA 19102.

and

John W. Herron, Esquire, Assistant Disciplinary Counsel, 807 Widener Building, 1339 Chestnut Street, Philadelphia, PA 19107.

(s) F. Emmett Fitzpatrick
F. Emmett Fitzpatrick

Dated: November 1, 1978

EXHIBIT "A"

Philadelphia Daily News, Friday, February 16, 1973

2 ATTORNEYS CHARGED IN 'MISCONDUCT' PROBE

By Dave Racher

Two more lawyers, William A. Goichman and Gary C. Leeds, have been charged with "professional misconduct" in the special Common Pleas Court probe of "ambulance-chasing" attorneys.

Goichman, president of the Philadelphia Trial Lawyers last year and a former member of the Bar Association's Board of Governors, was charged with seven violations. He also was accused of submitting inflated medical claims to insurance companies.

Leeds was accused of unethically soliciting 17 victims of a bus crash, then submitting inflated medical bills to insurance companies.

One case against Goichman deals with a woman injured in an accident who, according to Michael Franck, who heads the probe, insisted she did not want to file a claim.

Goichman, according to the petition, filed a claim with the woman's insurance company, saying she had seen two doctors, and obtained a $300 settlement check for her.

When the woman refused to endorse the check, Goichman "endorsed the name . . . without authorization and deposited it in his own account, not knowing that payment had been stopped by the insurance carrier which had been notified by their insured of the fraudulent claim."

Supreme Court, U. S.
FILED
MAY 29 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1636

WILLIAM A. GOICHMAN, Petitioner

v.

THE DISCIPLINARY BOARD OF THE

SUPREME COURT OF PENNSYLVANIA, Respondent

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF FOR RESPONDENT IN OPPOSITION

ALLEN B. ZERFOSS, Esquire
Chief Disciplinary Counsel
SAMUEL D. MILLER, Esquire
JOHN W. HERRON, Esquire
Attorneys for Respondent
809 Widener Building
Philadelphia, PA 19107

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OPINIONS BELOW

The lower court opinions in the instant matter were appended to the Petition and are not appended hereto. Neither of the opinions below is reported.

JURISDICTION

Jurisdictional requisites for the instant matter are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Whether this Court should grant certiorari based upon Petitioner's claim that he was denied his right to a speedy trial as guaranteed by the Sixth and Fourteenth Amendments in a non-criminal attorney disciplinary proceeding in a state court, by reason of the trial court's failure to render a decision for 3 years 9-1/2 months where Petitioner's right to practice law was unaffected by reason of the pendency of this matter although he was

suspended from the practice of law based upon an unrelated conviction for tax evasion.

2. Whether this Court should grant certiorari based upon Petitioner's claim that the weight of the evidence in two charges was insufficient where the trial court, in detailed findings of fact, sustained all seven charges of gross professional misconduct and where this same claim was raised on appeal to the Supreme Court of Pennsylvania, which affirmed Petitioner's two year suspension.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT XIV

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall

make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

COUNTER-STATEMENT OF THE CASE

As a result of an investigation conducted by the Special Counsel of the Special Judicial Investigation of the Philadelphia Court of Common Pleas, a Petition for Imposition of Discipline was filed against Petitioner by the Special Counsel at February Term, 1973, No. D-29, in the Court of Common Pleas of Philadelphia County. Said Petition lodged seven (7) charges of professional misconduct against Petitioner, arising out of five separate cases. The charges involved solicitation, filing false retainer agreements, filing fraudulent

medical claims and prosecuting a claim without the authorization of a client. A hearing on the Petition for Discipline was held on September 23, 24 and 25, 1974. The Special Counsel presented his case in the form of witnesses and documents and rested. Petitioner presented no evidence.

The three judge Special Disciplinary Court which heard the case against Petitioner took the case under advisement. On June 26, 1978, the Special Disciplinary Court issued its decision, finding that Petitioner was "guilty of each of the... counts" contained in the Petition for the Imposition of Discipline. The trial court found affirmative conduct on Petitioner's part which constituted the various ethical violations charged and found Petitioner's conduct to be "utterly reprehensible." The court ordered a suspension from the practice of law for a period of two years (see

Petitioner's Appendix B).

On June 27, 1978, Petitioner filed Notice of Appeal of the aforesaid decision in the Supreme Court of Pennsylvania. Thereafter, under cover of letter dated November 2, 1978, Petitioner, through counsel, filed the Application for Relief which appears as Appendix C to Petitioner's Petition for Writ. By letter dated December 8, 1978, the Supreme Court of Pennsylvania notified Petitioner's counsel that decision on the aforesaid Application for Relief was reserved. A true and correct copy of said letter is attached hereto, made a part hereof and marked Appendix A.

Both Petitioner, through counsel, and the Respondent named herein submitted letter briefs to the Supreme Court of Pennsylvania. Petitioner's letter brief was dated January 15, 1979. A true and correct copy of said letter is attached hereto, made a part hereof

and marked Appendix B. Respondent's answering letter brief was dated January 30, 1979. A true and correct copy of said letter is attached hereto, made a part hereof and marked Appendix C. Petitioner's reply was a letter dated February 8, 1979. A true and correct copy of said letter is attached hereto, made a part hereof and marked Appendix D. Respondent's counter-reply was a letter dated February 13, 1979. A true and correct copy of said letter is attached hereto, made a part hereof and marked Appendix E. Each of the foregoing letter briefs dealt with the issue of whether Petitioner suffered any prejudice by virtue of the delay between hearing and decision and whether there was sufficient evidence to affirm the decision of the Special Disciplinary Court.

It should be noted that although representatives of Respondent submitted briefs

below in opposition to Petitioner's position below, at no point in time was Respondent a party to or involved in Petitioner's case.

By Order dated February 28, 1979, the Supreme Court of Pennsylvania unanimously affirmed and approved the findings of the Special Disciplinary Court and ordered Petitioner suspended for two (2) years, retroactive to February 9, 1978.[1] One justice dissented in favor of commencing the two year suspension on the date of the

[1]By Order dated October 14, 1977, Petitioner was suspended from the practice of law in Pennsylvania, and subsequently in California also, by reason of his conviction of two (2) counts of tax evasion in violation of 26 U.S.C §7201. While Petitioner subsequently has been reinstated to the practice of law in California, he remains suspended in Pennsylvania.

Order. Petitioner's Petition for Writ of Certiorari then followed and was docketed on April 27, 1979.

ARGUMENT

I. THIS COURT SHOULD NOT GRANT CERTIORARI BASED UPON PETITIONER'S CLAIM THAT HE WAS DENIED HIS RIGHT TO A SPEEDY TRIAL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS IN A NON-CRIMINAL ATTORNEY DISCIPLINARY PROCEEDING IN A STATE COURT, BY REASON OF THE TRIAL COURT'S FAILURE TO RENDER A DECISION FOR 3 YEARS 9-1/2 MONTHS, WHERE PETITIONER'S RIGHT TO PRACTICE LAW WAS UNAFFECTED BY REASON OF THE PENDENCY OF THIS MATTER, ALTHOUGH HE WAS SUSPENDED FROM THE PRACTICE OF LAW BASED UPON AN UNRELATED CONVICTION FOR TAX EVASION.

Petitioner Has Failed to Raise a Substantial Federal Question

Where there is no real and substantial federal question, or where the matter is devoid of merit and frivolous this Court will not grant review and the mere averment of a federal question without color of ground there-

fore is insufficient. New Orleans v. New Orleans Water Works Co., 142 U.S. 79 (1891).

Petitioner's claim of a right to certiorari in the instant matter because of an alleged denial of right to speedy trial is devoid of merit and frivolous. The words of the Sixth Amendment make that amendment applicable only to criminal prosecutions. In distinction, a disciplinary proceeding is not a criminal prosecution. The universally accepted view of the nature of disciplinary proceedings has been expressed well by the court of appeals in In re Echeles, 430 F.2d 347, 349-50 (7th Cir. 1970), wherein the court stated,

> "Preliminarily, it would be well to note that disbarment and suspension proceedings are neither criminal nor civil in nature but are special proceedings, sui generis, and result from the in-

herent power of the courts over their officers. Such proceedings are not law suits between parties litigant but rather are in the nature of an inquest or inquiry as to the conduct of the Respondent. they are not for the purpose of punishment, but rather seek to determine the fitness of an officer of the court to continue in that capacity and to protect the courts and the public from the official ministrations of persons unfit to practice law. Ex parte Wall, 107 U.S. 265, 2 S.Ct. 569, 27 L.Ed. 552 (1888)."

Disciplinary proceedings have been styled "quasi-criminal", In re Ruffalo, 390 U.S. 543 (1968); and attorneys in disciplinary proceedings have been accorded certain procedural and substantive rights such as the right to

notice of the charges and a hearing, id.; and the right to assert the privilege against self incrimination. Spevack v. Klein, 385 U.S. 511 (1967).

The right of an attorney in a disciplinary proceeding to a speedy trial as guaranteed by the Sixth Amendment has been the subject of request for certiorari in this Court previously and the Court has declined to review the question. Bar Association of Baltimore v. Posner, 275 Md. 250, 339 A.2d 657 (1975), cert. denied, 423 U.S. 106 (1975); In re Weinstein, 254 Ore. 392, 459 P.2d 548 (1969), cert. denied, 398 U.S. 903 (1970). It is clear that an attorney facing disciplinary charges is entitled to due process. However, as stated by the American Bar Association Special Committee on Evaluation of Disciplinary Enforcement, Problems and Recommendations in Disciplinary Enforcement, Final Draft/June 1970, p.

124:[2]

> "Due process is satisfied if the attorney is advised of the charges, witnesses against him are produced and subjected to cross-examination and he is given the right to adduce testimony and to testify in his own behalf."

In the instant case it is clear from Petitioner's Statement of the Case that the foregoing due process requirements were met in the courts below. It was only because of a decision by Petitioner that no testimony was adduced on his behalf during the hearing before the Special Disciplinary Court.

The position that the right to a speedy trial under the Sixth Amendment is applicable only to criminal cases is buttressed by this

[2]The committee was chaired by Tom C. Clark, former justice of this Court.

Court's decision that another right under the Sixth Amendment, the right to trial by jury, is limited, and was intended to be limited by the framers of the Constitution, to persons subject to criminal indictment or presentment under the Fifth Amendment Ex parte Milligan, 71 U.S. 2 (1886). If the right to trial by jury under the Sixth Amendment is limited to criminal cases, then it follows logically that the right to a speedy trial is also so limited.

Petitioner Failed to Raise a Federal Question in the Courts Below

The jurisdiction of this Court to review proceedings in state courts is not that of a general reviewing court. Rather the review is limited to specific instances of denial of federal rights and unless a case involves a federal question the judgment or decree of the state court is not reviewable. Hunter v. McHugh, 320 U.S. 222 (1943). More-

over, even if the case involves a federal question it must appear that the lower court had occasion to pass on the federal question alleged to be involved, Herb v. Pitcairn, 324 U.S. 117 (1945), supp. op. 325 U.S. 77 (1945), reh. denied, 325 U.S. 893 (1945). It is not sufficient that a federal question might have been raised or decided in the court below. It must appear directly or by necessary intendment that the question was brought to the notice of the court and that the court decided the question. Crowell v. Randell, 35 U.S. 368 (1836). There must have been averments so distinct and positive as to place it beyond question that the party intended to assert a federal right. Kipley v. Illinois, 170 U.S. 182 (1898).

In the instant matter Petitioner has not shown that a federal question was raised in the court below. To the contrary, appendices B through D to the within brief show

that Petitioner did not raise a federal question below. Petitioner did not allege an infringement of a constitutional right or a violation of any amendment to the Constitution or even that a federal question existed. In addition, there is no indication whatever that the Supreme Court of Pennsylvania, in issuing its Order of February 28, 1979, decided any federal question.

The Within Matter is One Involving Only Familiar Principles of State Law

The decision below rested on independent state grounds, which are adequate to support the judgment rendered by the Supreme Court of Pennsylvania and which are based on familiar legal principles. The briefs below of Petitioner and Respondent cited only cases from various states in support of their arguments. Those briefs demonstrate that all of Petitioner's claims

regarding post trial delay were susceptible of resolution on the basis of familiar legal principles involving state law pertaining to delay in disciplinary proceedings. See especially, Appendix C, infra. Under such circumstances this Court should not grant certiorari. Herb v. Pitcairn, supra.

Petitioner's Cases are Distinguishable On the Facts and On the Law

The cases cited by Petitioner in support of his contention that he was denied his rights under the Sixth Amendment are distinguishable from the instant case on both the facts and the law. The cases of Thompson v. Louisville, 362 U.S. 199 (1960); Barker v. Wingo, 407 U.S. 514 (1972); Klopfer v. North Carolina, 386 U.S. 213 (1967); Pollard v. United States, 352 U.S. 354 (1957); Strunk v. United States, 412 U.S. 434 (1973); Johnson v. Florida, 391 U.S. 596 (1968); Harris v. United States, 404 U.S. 1232 (1971); United States v. Marion,

404 U.S. 307 (1971); Smoker v. Russell, 218 F.Supp. 899 (M.D.Pa. 1963); and U.S. ex rel. Giovengo v. Maroney, 194 F.Supp. 154 (W.D.Pa. 1961) are all criminal cases, which come within the scope of the Sixth Amendment, while the within matter is not a criminal case and not within the scope of the Sixth Amendment. Moreover the Smoker and Giovengo cases, supra, involved delays occurring after the entry of guilty pleas by the defendants and, in the Smoker case, after repeated requests by defendant for final disposition of his case. Such cases clearly are distinguishable from the instant matter. In addition, the Pollard case, supra, clearly noted that the question of whether there has been a deprivation of rights depends on the circumstances of each case. 352 U.S. at 361. In assessing the circumstances of a case, the Court of Appeals has held that where a delay occurred after a bench trial and before the decision

was announced by the District Court and the delay did not prejudice the appeal of the defendant who was at large on bail during the period of delay then the defendant was not denied a speedy trial. United States v. Beebe, 431 F.2d 428 (9th Cir. 1970). The facts of the Beebe case clearly approximate the facts of the instant case and if the Sixth Amendment is to be applicable to a disciplinary case Respondent respectfully submits that the Beebe case should control.

Petitioner's reliance on the case of Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154 (1971), is misplaced. Said decision was one involving admission to the bar. Additionally, while Petitioner does not disclose the fact, the quotation at p. 10 of Petitioner's brief, taken from the Law Students case, actually appears in dicta in Mr. Justice Black's dissent in that case: 401 U.S. at 174.

Petitioner Has Failed to Comply With Rules of Court

Rule 21(4) of this Court provides that all parties to the proceeding in the court whose judgment is sought to be reviewed are considered parties herein unless the Petitioner takes certain enumerated steps. In the instant case, the counsel below was a special counsel appointed by the Court of Common Pleas of Philadelphia. Except for the letter briefs which Respondent submitted below at the request of the Supreme Court of Pennsylvania Respondent was not a party below. However, Petitioner does not make the special prosecutor a party and to Respondent's best information has not complied with Rule 21(4).

II. THIS COURT SHOULD NOT GRANT CERTIORARI BASED UPON PETITIONER'S CLAIM THAT THE WEIGHT OF THE EVIDENCE IN TWO CHARGES WAS INSUFFICIENT WHERE THE TRIAL COURT, IN DETAILED FINDINGS OF FACT, SUSTAINED ALL SEVEN CHARGES OF GROSS PROFESSIONAL MISCONDUCT AND WHERE THIS SAME CLAIM WAS RAISED ON APPEAL TO THE SUPREME COURT OF PENNSYLVANIA, WHICH AFFIRMED PETITIONER'S TWO YEAR SUSPENSION.

Petitioner claims that there was insufficient evidence with respect to the "Halcsin" and "Manigo" matters to support the findings of the Special Disciplinary Court that he was guilty of unprofessional conduct. In raising his challenge to the sufficiency of the evidence, Petitioner attacks the Special Disciplinary Court findings in only two of the seven charges and raises no specific objections to the other five charges.

In the five unchallenged charges of professional misconduct, the Special Disciplinary Court found that Respondent solicited the Arnold and Penn cases (Charges I and VII); filed fraudulent medical claims for Roger and Doris Lindsey and also on behalf of Penn (Charges IV, V and VII); filed a false retainer agreement in the Arnold case (Charge VI); and prosecuted an unauthorized claim for Penn (Charge VII).

These charges alone are grave and the evidence was strong. For example, with respect to the solicitation of the Arnold case in Charge I, Arnold's testimony was substantially corroborated by his mother. Arnold subsequently observed the person who solicited the case in Petitioner's office. In Charges IV and V, both Roger Lindsey and his mother, Doris, testified that they suffered only minor injuries and had sought no medical treat-

ment prior to their meeting with Petitioner. Both Lindseys testified that Petitioner directed them to testify falsely in depositions and in answers to interrogatories that they were treated by a physician 17 times instead of the two medical visits they actually made. Finally, in Charge VII Petitioner was found to have filed a personal injury claim for Barbara Penn, an uninjured passenger in an automobile accident, without her knowledge or authorization. Petitioner was found to have falsely represented to the insurance carrier that Mrs. Penn was treated by two named physicians, who in fact had neither treated Mrs. Penn nor communicated with Petitioner. The Special Disciplinary Court found (Petition, p. 9a-10a) that Petitioner:

> "[F]abricated this entire medical claim including representations concerning Mrs. Penn's injuries. [Petitioner] then negotiated a settlement of Barbara Penn's case for $350 based on his fraudulent representations.
>
> "After concluding the settlement, [Petitioner] went to Mrs. Penn's house and prevailed upon her to sign the release. He then received the settlement check and again attempted to get Barbara Penn to go along with the fraudulent scheme by endorsing it. She refused, and reported the scheme to the responsible party which resulted in a stop payment order being placed on the check. [Petitioner] thereafter presented the check for payment with the forged endorsement of Barbara Penn. We infer from the evidence that [Petitioner] forged the endorsement himself or was directly responsible

for it."

These five charges alone to which Petitioner has not filed exceptions, more than adequately support the order imposing suspension. Petitioner's request for discretionary review by this Court of only two of the seven proven charges of misconduct is unnecessary and should be denied.

The record below is replete with evidence to support Petitioner's suspension. This Court has stated that:

> "While our duty, in reviewing a conviction upon a complaint that the procedure through which it was obtained violates due process..., calls for our examination of evidence to determine for ourselves whether a federal constitutional right has been denied..., we accord in that examination great respect to the conclusions of the state judiciary...that respect

> leads us to accept the conclusion of the trier on disputed issues 'unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.'"

Akins v. Texas, 325 U.S. 398, 401-402 (1945). Thus, the inquiry is whether Petitioner has suffered fundamental unfairness as a result of the trial court's conclusions. It is clear that Petitioner was accorded all his fundamental due process rights. He had notice of charges against him and an opportunity to be heard on those charges. In addition the unchallenged findings of gross professional misconduct in five charges provide a sufficient record to support the suspension imposed on Petitioner.

CONCLUSION

Based upon the foregoing points of argument, Respondent asserts that the questions proffered for the consideration of this Honorable Court are totally and completely without merit, and that Petitioner has presented no argument or compelling reason which would justify consideration of those questions by your Honorable Court. Respondent therefore prays that your Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Allen B. Zerfoss, Esquire

Chief Disciplinary Counsel

Samuel D. Miller

Samuel D. Miller, III, Esquire

Assistant Disciplinary Counsel

John W. Herron

John W. Herron, Esquire

Assistant Disciplinary Counsel-in-Charge

District I Office

Counsel for Respondent

APPENDIX "A"

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

December 8, 1978

F. Emmett Fitzpatrick, Esquire
3131 Centre Square West
Philadelphia, PA 19102

In the Matter of: William A. Goichman
Appeal of: William A. Goichman
No. 275 January Term, 1978

Dear Mr. Fitzpatrick:

This is to advise you that the following Order has been endorsed on your Application for Relief, filed in the above-captioned matter:

"11/28/78

Decision reserved. Oral argument and written brief to be filed dur- April, 1979, session on merits and delay in disposition issue.

By the Court."

Accordingly, brief for the appellant is due for filing on January 22, 1979.

Your attention is directed to Pa. R.A.P. 2111(b) which provides that copies of the lower court opinions must be appended to the appellant's brief. This rule will be strictly enforced, and no briefs will be accepted for filing which do not comply with this requirement.

Very truly yours,

Sally Mr[illegible]os
Prothonotary

By_____
Catherine E. Lyden
Deputy Prothonotary

CEL:bl

cc: William P. Stewart, Esquire
Allen B. Zerfoss, Esquire
John W. Herron, Esquire

Mr. Stewart and Mr. Zerfoss:

The Court would appreciate your appearing at time of oral argument to present your views in this matter.

APPENDIX "B"

LAW OFFICES
3131 Centre Square West
Philadelphia PA 19102
215-568-2700

January 15, 1979

Honorable Michael J. Eagen
Supreme Court of Pennsylvania
470 City Hall
Philadelphia, PA 19107

Re: In the Matter of William A. Goichman
Appeal--No. 275 January Term 1978

Dear Chief Justice Eagen:

In consultation with Mr. Justice Nix about a rather sensitive matter presently pending before the Court, I have taken the liberty of writing this letter to you. For several reasons suggested herein, I am asking the Court to handle this matter in a rather different and unusual fashion.

This matter is presently pending before your Court as a result of an Application for Relief which I filed in November 2, 1978 on behalf of Mr. Goichman, my classmate in law school. At the suggestion of the Court, I served as my opponent both William P. Stewart, who was the Special Prosecutor appointed by the Common Pleas Panel here in Philadelphia to prosecute these matters, and the Disciplinary Counsel, who, of course, had come into existence since this matter was handled. Both Mr. Stewart and John W. Herron, on behalf of the Disciplinary Counsel, have respectfully declined to participate. I am faced with a briefing date of January 22 and, while I am quite willing to file a brief and to argue this matter on the April list, to do so will apparently require that a Special Prosecutor be appointed and familiarize himself with all of the details of this case just to bring argument before

your Court. Attached are letters from Mr. Herron and Mr. Stewart which have been directed to the Court.

Mr. Goichman was a target of the Special Judicial Investigation conducted by the Court of Common Pleas in October of 1971. On February 9, 1973 a Petition for the Imposition of Discipline against Mr. Goichman was filed charging him with seven specific counts of solicitation, filing of false retainer agreements, fraudulent medical claims and prosecuting an unauthorized claim. This petition was made public and carried in the press here in Philadelphia, although this policy was subsequently changed. Nonetheless, the public was made aware of the fact that charges were pending against Mr. Goichman.

In September of 1974, a hearing was held before the Honorable Charles Klein, the Honorable Gregory Lagakos and the

Honorable James L. Stern. Testimony was concluded in the Fall of 1974, but a decision was not announced until June 26, 1978, some 44 months later, and the recommendation was that Mr. Goichman be suspended for two years beginning June of 1978.

In the meantime, Mr. Goichman was convicted of income tax evasion in June of 1975 and a fine imposed. As a result of this, the Supreme Court suspended Mr. Goichman for two years, beginning February 9, 1976. When he applied for reinstatement on June 26, 1978, he was advised for the first time of the finding by the original three-Judge panel.

Mr. Goichman very strenuously disagrees with the finding of the three-Judge panel based upon the evidence before it. He was advised by different counsel throughout the pendency of these proceedings that evidence was not nearly enough to result in a finding against him. Moreover, he fully ex-

pected that whatever the finding might be, the penalty would take effect and even be concluded far before June 26 of 1978.

Since February 9, 1976, Mr. Goichman has not been permitted to practice law in Pennsylvania. He has relocated to the State of California and has applied for admission to that Bar. The pendency of these unfinished proceedings is delaying action upon that admission. On his behalf, I sought unusual relief from your Court with a Petition and Memorandum of Law. I would be happy to proceed with the briefing schedule and argument, except for the fact that it occurs to me that to do so might be a cumbersome way of handling this problem.

The legal issues regarding delay are fairly simple. There has been absolutely no attempt to explain in any fashion the delay of the Hearing Panel nor indeed does

there now appear that there is even an attorney who is prepared to do so. Whatever the explanation is to be, it must be regarded as intolerable, particularly in light of the fact that the penalty of two years suspension did not begin to run until after the intolerable delay, thus completely amplifying the degree of injustice. Had this matter been decided promptly, it would have been well behind Mr. Goichman by June of 1978.

Your Court has recognized that a disbarment proceeding is every bit as serious as a criminal trial and often far more so. Schlesinger Case, 404 Pa. 584, 172 A2d 835 (1961). The need for proceeding promptly with charges in criminal matters has been well recognized by your Court and I will not attempt to repeat the citations here. The charges themselves make findings of guilt about the submission of contingent fee agreements, a requirement honored more in its

breach than in its observance and one which has since been rescinded and of inflated medical bills. The record indicates quite clearly a serious lack of any evidence of the defendant's knowledge about these bills and complete reliance upon the testimony of certain clients who obviously did not understand the intracacies of legal representation. At any rate, they do not rise to the level of violations which require an attorney to suffer to a greater extent than Mr. Goichman already has.

In light of the fact that the adversary system apparently has not materialized in this case, and the delays that have already been occasioned through no fault of Mr. Goichman, I am requesting the Court to reconsider its order of November 28, 1978 and to decide this matter without further benefit of oral argument or written brief, except insofar as the Court feels that it might be aided by

further legal research on my behalf. I am further asking the Court to consider this a matter for immediate disposition in light of the time that has already passed and the effect that the delay of the Hearing Panel has already had upon the professional career of Mr. Goichman.

I note that the Committee of the Disciplinary Board to which Mr. Goichman appealed for reinstatement has not yet handed down its decision on reinstatement and I rather feel that they are waiting for some disposition of this present matter.

I have taken the liberty of enclosing, in addition to the letters already noted from Mr. Herron and Mr. Stewart, a copy of my Application for Relief which contains not only a Memorandum of Law, but also the Opinion of the three-Judge panel. I really see nothing that can enhance the public reputation of the legal profession by causing this matter to be argued upon the regular list. Nor do I see the Court in its mercy allowing further periods of suspension to be effective as to Mr. Goichman.

Because of the problems noted above, I have not attempted service of this letter upon either Mr. Stewart or Mr. Herron and will not do so until I receive contrary instructions from the Court.

Sincerely,

F. Emmett Fitzpatrick

FEF/bd

Enclosures

cc: Honorable Justice Henry X. O'Brien
Honorable Justice Samuel J. Roberts
Honorable Justice Rolf Larsen
Honorable Justice Robert N.C. Nix, Jr.
Honorable Justice Louis L. Manderino

APPENDIX "C"

THE DISCIPLINARY BOARD

OF THE

SUPREME COURT OF PENNSYLVANIA

DISTRICT I OFFICE

809 Widener Building

Philadelphia, Pennsylvania 19107

(215) 563-2650

January 30, 1979

Honorable Michael J. Eagen

Chief Justice

Supreme Court of Pennsylvania

464 City Hall

Philadelphia, PA 19107

RE: In re William A. Goichman,

No. 275, January Term, 1978

Dear Chief Justice Eagen:

Pursuant to the request previously made by your Honorable Court that this office present its position in the above captioned case

(Order of November 28, 1978), we respond as follows to the letter dated January 15, 1979, from F. Emmett Fitzpatrick, Esquire, to you.

The Goichman case is before your Honorable Court not as a result of Mr. Fitzpatrick's Application for Relief filed November 2, 1978, but as a result of an appeal filed by Mr. Goichman on June 27, 1978, from the decision of the Special Disciplinary Court of the Court of Common Pleas of Philadelphia County ("the Court"). That decision, dated June 26, 1978, found Mr. Goichman to have committed all disciplinary violations with which he was charged by the Special Prosecutor of the Special Judicial Investigation of the Philadelphia Courts ("the Investigation").

A Petition for Imposition of Discipline was filed against Mr. Goichman by the Special Prosecutor at February Term, 1973, No. D-29. The Petition lodged seven charges

against Mr. Goichman, arising out of five separate cases. The charges involved solicitation, filing false retainer agreements, filing fraudulent medical claims and prosecuting a claim without the authorization of a client. After hearing, the Court determined that Mr. Goichman was "guilty of each of the...counts" in the Petition. The Court found Mr. Goichman's conduct to be "utterly reprehensible" and determined that a suspension from the practice of law for a period of two years was the discipline appropriate to the violations found.

Turning to the merits of the case, the discipline recommended shows a clear recognition by the Court of the seriousness of the charges involved, which go to the very heart of the legal system. Mr. Goichman's case was not one which involved simply a failure to file contingent fee agreements. Rather the case involves per-

versions of the legal process. The filing of false retainer agreements, the submission of fraudulent medical bills and the prosecution of an unauthorized claim all indicate a lack of recognition of a lawyer of his obligations as an officer of the court. See, In re Berlant, 458 Pa. 439, 328 A.2d 471 (1974). Additionally, solicitation was in 1971, and continues to be, a violation of the Code of Professional Responsibility. Ohralik v. State Bar of Ohio, ___ U.S. ___, 98 S. Ct. 1912, 56 L.Ed. 2d 444 (1978); In re Berlant, supra.

The fact, as set forth at p. 3 of Mr. Fitzpatrick's letter, that Mr. Goichman disagrees with the findings of the Court and that Mr. Goichman may have been advised by sone unnamed prior counsel that the evidence "was not nearly enough to result in a finding against

him" does not change the findings of the Court or make those findings wrong. To the contrary, in each of the charges a panel consisting of three eminent judges of the Court of Common Pleas found affirmative conduct on Mr. Goichman's part which constituted the various ethical violations charged. That same eminent panel, by its holding, found the evidence submitted by Mr. Goichman to be less credible than the evidence presented by the Special Prosecutor. As your Honorable Court has said, "If under the circumstances it is reasonable to infer that the action was taken at the party's direction or with his approval, the fact finder may draw such inferences to support a finding of guilt." In re Berlant, supra, 328 A.2d at 474. That quotation clearly and certainly applies to the instant case.

Turning to the contentions regarding

delay in the rendering of an opinion below, several points must be considered.

First, from approximately July 1973 Mr. Goichman has practiced law in California. He is not, as Mr. Fitzpatrick suggests, presently seeking admission to the bar in California. He was admitted there in April 1972. Mr. Goichman presently is suspended there as a result of his convictions in the United States District Court for the Eastern District of Pennsylvania of two counts of income tax evasion. That suspension was effective in California in August 1976. Thus the pendency of the instant proceedings is not delaying action on his admission to the bar in California. Neither is the pendency of the instant case delaying Mr. Goichman's reinstatement in California since no such petition has been filed there. Similarly it is not true that a Hearing Committee of the Disciplinary Board is with-

holding decision on Mr. Goichman's Petition for Reinstatement to the Pennsylvania Bar. To the contrary, on or about January 25, 1979, the Hearing Committee filed its Report with the Disciplinary Board. Mr. Goichman has been sent a copy of that decision as has his attorney in that proceeding.

Second, the general rule regarding delay has been that in order for a disciplinary respondent to successfu ly assert a defense involving delay he must show that there was an unreasonable delay and that he was prejudiced thereby. One of the few disciplinary cases in Pennsylvania to face such a situation was Wilhelm's Case, 269 Pa. 416, 112 A. 560 (1921), in which a five year delay occurred between the issuance of a rule to show cause why Wilhelm should not be disbarred and the date of hearing. Your Honorable Court upheld the disciplinary action taken by

the lower court noting that the delay inured to Wilhelm's benefit and that he had demonstrated no prejudice from the delay. Notwithstanding the age of the Wilhelm case, its principles are in accord with the weight of modern authority. See, Ann Arundel County Bar Association, Inc. v. Collins, 272 Md. 578, 325 A.2d 724 (1974); In Re Bossov, 60 Ill. 2d 439, 328 N.E.2d 309 (1975); Taylor v. State Bar of California, 11 Cal.3d 424, 521 P.2d 470, 113 Cal. Rptr. 478 (1974); Yokozeki v. State Bar of California, 11 Cal.3d 472, 521 P.2d 858, 113 Cal. Rptr. 602 (1974); In Re Durham, ___ Okla. ___, 312 P.2d 69 (1942); Florida Bar v. Wagner, 197 So.2d 823 (Fla. 1967); Nebraska State Bar Association v. Jensen, 171 Neb. 1 ,105 N.W.2d 459 (1960); Nebraska State Bar Association v. Bates, 162 Neb. 652, 77 N.W.2d 302 (1956); Oklahoma Bar Association v. Mason, 380 P.2d

961 (Okla. 1963); In Re Sarbone, 63 N.J. 94, 304 A.2d 734 (1973); Tennessee Bar Association v. Berke, 48 Tenn. App. 140, 344 S.W. 2d 567 (1961); West Virginia State Bar Association v. Pence, ___ W.Va. ___, 240, S.E.2d 668 (1978); In Re Wright, 131 Vt. 473, 310 A.2d 1 (1973).

The question then becomes what constitutes prejudice in the delay context. Generally the prejudice which must be shown is that resulting from the respondent's inability to present a defense to the charges. See, In re Wright, supra. Among factors which have been considered critical are the death or unavailability of witnesses, Taylor v. State Bar, supra; Tennessee Bar Association v. Berke, supra; the dimming of a witnesses' memory, In Re Sarbone, supra; Oklahoma Bar Association v. Mason, supra; and the loss of material evidence, West Virginia State Bar v. Pence, supra;

Columbus Bar Association v. Teaford, 6 Ohio St.2d 253, 217 N.E.2d 872 (1966). However, the burden is on the respondent to raise the issue at trial and to prove prejudice. See, In Re Wright, 310 A.2d at 9. General claims of prejudice are insufficient to support a finding of laches; respondents must show "specifically" how they have been disadvantaged. Caldwell v. State Bar, 13 Cal.3d 488, 119 Cal. Rptr. 217, 531 P.2d 785 (1975), In Re Bossov, supra; Yokozeki v. State Bar, supra; Lewis v. State Bar, 9 Cal.3d 704, 511 P.2d 1173, 108 Cal. Rptr. 821 (1973).

In the instant case it is interesting and significant to note that Mr. Goichman is not claiming that he was unable to present a defense to the charges lodged against him or that there was any undue delay before his hearing in 1974. He is alleging, and only in general terms, that the delay

between hearing and decision was prejudicial. Such an allegation is insufficient under the generally accepted rule. Indeed, this Court recently held that because its scope of review is de novo the respondent had suffered no prejudice from the delay of the Disciplinary Board in filing its Report. In re Green, 470 Pa. 164, 368 A.2d 245 (1977). Although the delay in Green was less than in the instant case the principle enunciated remains viable. Moreover, the question must arise of whether your Honorable Court finds only a delay in rendering an opinion a sufficient ground to overturn an otherwise appropriate decision.

In view of the foregoing we respectfully suggest that your Honorable Court affirm the decision of the Court of Common Pleas of Philadelphia County and impose upon respondent a suspension from the

practice of law of two years.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Allen B. Zerfoss

Chief Disciplinary Counsel

By: _____

Samuel D. Miller, III

Assistant Disciplinary Counsel

_____

John W. Herron

Assistant Disciplinary Counsel-in-Charge

cc: Honorable Justice Henry X. O'Brien
Honorable Justice Samuel J. Roberts
Honorable Justice Robert N.C. Nix, Jr.
Honorable Justice Louis L. Manderino
Honorable Justice Rolf Larsen
F. Emmett Fitzpatrick, Esquire
Allen B. Zerfoss, Chief Disciplinary Counsel

APPENDIX "D"

LAW OFFICES

3131 Centre Square West

Philadelphia PA 19102

215-568-2700

February 8, 1979

Honorable Michael J. Eagen

Chief Justice

Supreme Court of Pennsylvania

464 City Hall

Philadelphia, PA 19107

Re: In re William A. Goichman

No. 275 January Term 1978

Dear Chief Justice Eagen:

Kindly regard this letter as the last communication on behalf of Mr. Goichman. As I informed you on several previous occasions, Mr. Goichman is most anxious to have this matter disposed of by your Court and does not wish to delay it by engaging

in repetitive correspondence. However, the letter of January 30th addressed to your Court by disciplinary counsel comes as a surprise in light of the earlier position of the Disciplinary Board that they would not participate in this matter. This letter is meant only to respond to a few of the more salient points made by disciplinary counsel's letter.

The charges before your Court originated with a Special Judicial Investigation and a hearing against Mr. Goichman held in September of 1974 and completed in that same month. The decision of this Panel was not handed down until June 26, 1978 recommending that Mr. Goichman be suspended for two years, beginning in June of 1978. The charges range from filing a false contingent fee agreement naming the source of the case as a "friend" of the plaintiff, whereas it had really been an "unidentified

man", to the filing of false medical bills which indicated that various plaintiffs had been treated on dates on which treatment had not been rendered. Mr. Goichman quite seriously disputes his connection with any of these eventual conclusions and points to the fact that the hearing was completely devoid of any evidence which could have implicated him in any overall conspiracy. Contrary to the position of disciplinary counsel, he did not offer testimony before the Hearing Committee. His objection to their finding is based upon the fact that they did not have sufficient evidence to reach the conclusions that they did. I am certain that additional evidence could be mustered to dispute the conclusions of the Trial Panel. While Mr. Goichman does not intend to abandon this contention, his present request for relief is based upon more serious and more obvious grounds.

Disciplinary counsel makes much of the fact that Mr. Goichman has not shown any prejudice as a result of the obvious delay by the Trial Panel. He fails to recognize that the Supreme Court of Pennsylvania has been one of the leading appellant bodies in our nation in recognizing the fact that the prior requirements of showing specific prejudice are no longer applicable. Moreover, the bland assertion that no prejudice has been shown completely overlooks the fact that the two year suspension ordered by the Panel will not be over until six years after the Panel's conclusion of testimony solely as the result of the Panel's delay. During the intervening four years, Mr. Goichman was forced to live under the cloud of suspension or disbarrment and was completely without any recourse to hurry the Opinion of this Panel. The Supreme Court in the past has recognized that the evils of delay are

so great that they require complete discharge or reversal of conviction if, indeed, they are serious and unexplained. In the prior instance, the delay could not be more serious and the only justification pointed to for the delay is apparently an argument that the Mr. Goichman has failed to show specific prejudice.

Mr. Goichman respectfully requests the Court's immediate attention to this matter and prays for their Order overturning the suspension imposed by the Trial Panel.

Sincerely,

F. Emmett Fitzpatrick

FEF/bd

cc: As indicated on following page.

cc: Samuel D. Miller, III, Esquire
Honorable Justice Robert N.C. Nix, Jr.
Honorable Justice Henry X. O'Brien
Honorable Justice Samuel J. Roberts
Honorable Justice Louis L. Manderino
Honorable Justice Rolf Larsen
Mr. William A. Goichman

APPENDIX "E"

THE DISCIPLINARY BOARD

OF THE

SUPREME COURT OF PENNSYLVANIA

DISTRICT I OFFICE

809 Widener Building

Philadelphia, Pennsylvania 19107

(215) 563-2650

February 13, 1979

Honorable Michael J. Eagen
Chief Justice
Supreme Court of Pennsylvania
464 City Hall
Philadelphia, PA 19107

RE: In re William A. Goichman
No. 275, January Term, 1978

Dear Chief Justice Eagen:

Having received a copy of Mr. Fitzpatrick's letter of February 8, 1979 we believe that our letter of January 30,

1979 deals adequately with the issues which Mr. Fitzpatrick's various letters raise.

As this office previously has noted, the delay to which Mr. Goichman objects was not a pretrial delay but a posttrial delay. Thus his ability to present a defense was not jeopardized. Also during the entire period to date Mr. Goichman has not been suspended as a result of the misconduct found by the Special Disciplinary Court in its opinion dated June 26, 1978. He has been free to practice in the Commonwealth except for the period of time he has been suspended for <u>other</u> misconduct. Moreover, perhaps the most important factor to be considered in analyzing the delay in Mr. Goichman's case is that the case was not a criminal case but a disciplinary case, in which there has been a finding that the attorney is unfit and that the public, the courts and the profession require protection

from Mr. Goichman. In this case delay is not the important factor; protection from an unfit attorney is.

Finally, if, as Mr. Fitzpatrick speculates, "additional evidence could be mustered to dispute the conclusions of the Trial Panel" that evidence should have been presented at trial. Moreover, we take that statement by Mr. Fitzpatrick to be an admission that there was, in fact, sufficient evidence to justify and support the findings of the Disciplinary Court.

Under the circumstances we respectfully reiterate our prior statement that the opinion of the Special Disciplinary Court be affirmed and that Mr. Goichman be suspended from the practice of law for two years.

Respectfully,

OFFICE OF DISCIPLINARY COUNSEL

Allen B. Zerfoss

Chief Disciplinary Counsel

By: _____
Samuel D. Miller, III
Assistant Disciplinary Counsel

_____
John W. Herron
Assistant Disciplinary Counsel-in-Charge.

cc: Honorable Justice Henry X. O'Brien
Honorable Justice Samuel J. Roberts
Honorable Justice Robert N.C. Nix, Jr.
Honorable Justice Louis L. Manderino
Honorable Justice Rolf Larsen
F. Emmett Fitzpatrick, Esquire
Allen B. Zerfoss, Chief Disciplinary Counsel

Supreme Court, U. S.
FILED
JUN 15 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1636

WILLIAM A. GOICHMAN, Petitioner

v.

THE DISCIPLINARY BOARD OF THE

SUPREME COURT OF PENNSYLVANIA, Respondent

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF PENNSYLVANIA

REPLY BRIEF BY PETITIONER

WILLIAM A. GOICHMAN,

In Pro Per

2040 Avenue of the Stars,

Century City, Ca. 90067

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-I- DISCIPLINARY COUNSEL CLAIMS THAT SERVICE WAS NOT MADE UPON THE SPECIAL PROSECUTOR AND THAT THIS WAS A DEFECT: BUT THE SPECIAL PROSECUTOR WENT OUT OF OFFICE MANY YEARS AGO AND ALTHOUGH SERVICE WAS MADE ON THE ATTORNEY WHO TRIED THE CASE (ATTY WM. STEWART) WHEN THE MATTER WAS BEFORE THE PENNSYLVANIA SUPREME COURT, HE DECLINED TO APPEAR. 1

-II- DISCIPLINARY COUNSEL CLAIMS THAT THE DUE PROCESS ARGUMENTS WERE NOT RAISED IN THE PENNSYLVANIA SUPREME COURT; THIS IS NOT SO. THEY WERE RAISED IN THE FORM OF CONTENTIONS ALTHOUGH NOT IPSSIMUS VERBIS IN ANY TALISMANIC PHRASES. 1

-III- PETITIONER'S RIGHT TO PRACTICE LAW IN THE COMMONWEALTH OF PENNSYLVANIA IS VERY MUCH

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-IV- THE CITATIONS CITED BY DISCIPLINARY COUNSEL CLAIMING THAT THE PARAMETERS OF THE SPEEDY TRIAL CLAUSE DO NOT APPLY TO ANY KIND OF UNREASONABLE DELAY IN COURT DISCIPLINARY PROCEEDINGS ARE INAPPOSITE. 4

-V- DISCIPLINARY COUNSEL CLAIMS THAT PETITIONER BY NOT DISCUSSING THE OTHER FIVE COUNTS CONCEDES THAT THERE WAS EVIDENCE SUPPORTING SAME; THIS IS NOT TRUE; THERE WAS NO SUCH EVIDENCE; PETITIONER DID NOT WANT TO BURDEN THE ORIGINAL PETITION WITH THE FULL DISCUSSION, BUT IS NOW CONSTRAINED TO DO SO. 6

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A R G U M E N T

-I-

DISCIPLINARY COUNSEL CLAIMS THAT SERVICE WAS NOT MADE UPON THE SPECIAL PROSECUTOR AND THAT THIS WAS A DEFECT: BUT THE SPECIAL PROSECUTOR WENT OUT OF OFFICE MANY YEARS AGO AND ALTHOUGH SERVICE WAS MADE ON THE ATTORNEY WHO TRIED THE CASE (ATTY. WM. STEWART) WHEN THE MATTER WAS BEFORE THE PENNSYLVANIA SUPREME COURT, HE DECLINED TO APPEAR.

-II-

DISCIPLINARY COUNSEL CLAIMS THAT THE DUE PROCESS ARGUMENTS WERE NOT RAISED IN THE PENNSYLVANIA SUPREME COURT; THIS IS NOT SO. THEY WERE RAISED IN THE FORM OF CONTENTIONS ALTHOUGH NOT IPSSIMUS VERBIS IN ANY TALISMANIC PHRASES.

Petitioner was represented in the Pennsylvania Supreme Court by the former District Attorney of the City of Philadelphia, F. Emmett Fitzpatrick, Jr.,Esq., who has handled hundreds of cases involving the constitutional provision of speedy trial.

His speedy trial arguments in his Motion and letters to the Pennsylvania Supreme Court were framed in a sophisticated manner, clearly showing he was raising the constitutional grounds of speedy trial.

For example, in his letter of Jan. 15, 1979 (P. 6b of Resp. Record), he said: "The need for proceeding promptly with charges in criminal matters has been well recognized by your Court and I will not attempt to repeat the citations here."

It was clear from this and many other references he made, and the Court, no doubt, so understood, that he was referring to the

parameters of the speedy trial clause.

There should be no talisman connected with the use of any particular phraseology and the intendment should be toward giving each person his day in court.

-III-

PETITIONER'S RIGHT TO PRACTICE LAW IN THE COMMONWEALTH OF PENNSYLVANIA IS VERY MUCH AFFECTED BY THIS SUSPENSION.

Petitioner's suspension for income tax evasion ran from February 9, 1976, to February 9, 1978. The suspension under the case before the Court runs from February 9, 1978 to February 9, 1980, thereby making it impossible for petitioner to become reinstated until February 1980. To say Petitioner is unaffected by this suspension order is a wholly frivolous contention!

-IV-

THE CITATIONS CITED BY DISCIPLINARY COUNSEL CLAIMING THAT THE PARAMETERS OF THE SPEEDY TRIAL CLAUSE DO NOT APPLY TO ANY KIND OF UNREASONABLE DELAY IN COURT DISCIPLINARY PROCEEDINGS ARE INAPPOSITE.

Respondent cites United States v. Beebe, 431 F.2d 428 (9th Cir. 1970). That case does not give any facts and has absolutely no precedential value for this case.

In re Philip Weinstein, 254 Ore. 392, 459 P.2d 548 (1969), involved a 27 months delay by the Bar in pressing charges. No specific dates are given in the opinion. That case did not involve a delay by the Court after the matter was sub judice, as here.

The delay there was by the Bar. The Court stated: "It is unnecessary to define in this case the proper remedy for vexatious and

unreasonable delay on the part of the Bar. None has been shown in this case." The Court there also noted that Petitioner in that case had requested a delay of five years while litigation was pending in the federal courts.

In Bar Assn. of Balt. City v. Posner, 275 Md. 250, 339 A.2d 657 (1975), the judicial proceedings were commenced July 31, 1974 and the Maryland Supreme Court decided the case in June 1975 , as shown by the reports, so that there was no delay once the matter reached the courts. The delay involved, therefore, concerned only pre-filing delay. The Court said on this: "Even had this right (right of speedy trial) been available, Posner overlooks the fact that much of the delay was attributable to his own tactics."

In the case at bar, the delay complained against was all due to the Court's delay. No reason has been cited or shown for such delay and on its face, the delay was unreasonable and intolerable.

-V-

DISCIPLINARY COUNSEL CLAIMS THAT PETITIONER BY NOT DISCUSSING THE OTHER FIVE COUNTS CONCEDES THAT THERE WAS EVIDENCE SUPPORTING SAME;THIS IS NOT TRUE; THERE WAS NO SUCH EVIDENCE; PETITIONER DID NOT WANT TO BURDEN THE ORIGINAL PETITION WITH THE FULL DISCUSSION, BUT IS NOW CONSTRAINED TO DO SO.

It is interesting to note that Disciplinary Counsel has made no attempt to answer the two counts discussed in the Petition; hence, it may be inferred that Disciplinary Counsel concedes that these two charges had no evidentiary support. In this event, it does not lie in the mouth of Disciplinary Counsel to assert that the other five charges would have warranted the discipline imposed. No one knows what the Court would have imposed without these two counts.

However, the other counts were equally unsupported. A short precis follows:

Count 1. This concerned unlawful solicitation. The evidence showed that someone came to the Arnold house.

The prosecutor stipulated it was not Mr. Goichman. (Sept. 23, 1974 N.T. p. 125). The testimony showed that the man who came to the house was seen in Mr. Goichman's office carrying a briefcase. Mr. Goichman did have other lawyers working for him. There was no evidence to connect Mr. Goichman with this unidentified man.

Only two members of the family who signed the power of attorney were called to testify. The third person, Rose Colantonio. the surviving daughter, was available but not called. She could very likely have requested this "unidentified" person to come to the house.

The key witness, Raymond Arnold , was asked:

"Q. Did you ever talk with your sister to find out or did she ever tell you whether or not she had asked Mr. Goichman--

A. No, she never did.

Q. My question is did you ever talk to her?

A. No.

Q. As to whether she had asked any attorney?

A. No, I did not. I never talked to her about it.

.... (Sept. 23,1974, N.T. 113-114).

The prosecutor told the Court "I expect to be able to produce her." (Sept. 23, 1974, N.T. p. 116). He never did , nor did he ever explain why he did not.

Assuming for the sake of argument that what this unidentified man did was improper, why should Mr. Goichman be held responsible? There was no showing that Mr. Goichman urged him to do what he did or that Mr. Goichman knew what he was doing either before or after the time he did it.

This "man" visited the family at least six weeks after the father had slipped and fallen on city property. This was not an "ambulance chasing" case. From aught that appears, Mr. Goichman only was aware that there was a file in the office which had been opened up by someone else. It hardly seems likely that Mr. Goichman would have encouraged this "unidentified" man to go the Arnold house many weeks after the fall incident, sight unseen, for the purpose of being retained.

Mr. Goicham cannot and should not be held responsible for what another does unless it is shown that he

was aware of it and authorized it. Furthermore, under the tenuous facts addued, it is equally reasonable that the daughter , Rose Colantonio, had engaged the services of the "unidentified" man. In any event, proof was signally lacking.

Count VI. This charged Mr. Goichman with filing a false retainer statement in the Arnold case because he put down "friends" as the referrer of the case. If Mr. Goichman had no better knowledge than that, relating to how the case came into the office, this is all he could say. Every attorney presumes that when a client comes to the office, he does so through some "friend."

For professional misconduct to exist, there must be shown that the attorney wilfully or deliberately misrepresented something. There is no evidence that Mr. Goichman had any better information. Even the Court stated that the person responsible for the case was an "unidentified man."

There was no evidence that Mr. Goichman knew the name or address of any specific person. Many referrals are made to an attorney without the

attorney knowing who it was. The use of the term "friends" would be in the same category as "unidentified."The prosecution did not meet its burden on this charge.

Count V. Mr. Goichman was charged with submitting a false medical bill for Doris Lindsay. The key question was whether Mr. Goichman knew that she had gone to the doctor only twice instead of the 17 times put down by the doctor.

The prosecutor asked here: (Sept. 24,1974 N.T. p. 154):

"Q. Before your case was settled, Mrs. Lindsay, did Mr. Goichman ever sit down with you and ask you how many times this doctor had treated you, and what your injuries were, and so on and so forth?

A. No, he didn't ask me how many times he treated me."

The record contains repeated denials by this witness of discussing this matter with Mr. Goichman. For example, Sept. 24, 1974, N.T. p. 160,

the witness was asked again:

"Q. And did you discuss with him at that time that you had only been to --

A. No, I didn't say anything about I only seen the doctor two times. I didn't go over that with him."

The witness was again asked: (Sept. 24, 1974, NT, p. 162);

"Q. Why didn't you tell him that you had only been twice?

A. He didn't ask me that.

Q. And you didn't offer to tell him?

A. No, he didn't ask me that.

Q. And you realized, didn't you, Mrs. Lindsay, that by not telling him that you had only been there twice, you were thereby confirming his direction to you to testify seventeen times, which was false, correct?

A. Yes, I said that."

The Disciplinary Court held that Mr. Goichman knew and participated in submitting a fraudulent medical

bill, but the Court nowhere mentions any evidence entitling it to make this kind of finding!

Count IV. This count concerns the same charge for Mrs. Lindsay's son, Roger. Similar testimony exonerating Mr. Goichman from knowing how many times the party actually went is contained in the record. For example, Sept. 24, 1974, NT., page 76, the son was asked:

"Q. At any time before your case was settled, did Mr. Goichman ever ask you how many times you had been to Dr. Kramer's office?

A. No."

He was asked repeatedly and said the same thing. At p. 84, Sept. 24, 1974, N.T.:

"Q. Did you ever review it with Mr. Goichman either at one of these hearings or at the time of the settlement how many times you had been to see Dr. Kramer?

"A. No, not that I can recall."

On p. 86, Sept. 24, 1974 NT, the following:

"Q. Isn't true that you didn't tell him how many times you had really been to the doctor?

A. I can't remember."

Then , again, the prosecutor asked, Sept. 24, 1974 NT, p. 104:

"Q. Yes. The question was, did you ever discuss with him how many times you had been treated by Dr. Cramer?

A. Not that I can remember.

Q. All right.

JUDGE KLEIN: Please let me get this clear. This witness' answer now is that he cannot remember whether he discussed with Mr. Goichman the number of times that he visited Dr. Cramer."

The prosecutor was uneasy with the state of the record and beginning on page 105, Sept. 24, 1974 . N.T., began a searching cross-examination of his own witness. To excerpt a part:

"Q. Did he ever make a simple inquiry of you, irrespective of what his doctor's bill showed; did he ever simply ask you how many times, Roger Lindsay, did you see Dr. Cramer for treatment on this case?

MR. ROSE: Let the record reflect a pause.

A. He could have. Like I said, I can't remember.

BY JUDGE KLEIN

Q. You are answering now that you don't remember?

A. He could have.

Q. What is your answer now; you don't remember?

A. I have no recollection; I can't remember. He could have; I don't know. I can't remember.

By Mr. Stewart: (The Prosecutor)

Q. You don't recall whether he did or not?

A. I can't recall."

The prosecutor, the Judge, the defense counsel, all recognized how vital this evidence was to the case and kept going over it. In spite of the failure to adduce this vital link, the Disciplinary Court still found that Mr. Goichman know of and participated in the fraudulent medical claim.

All Mr. Goichman kew was what the medical bill showed. It was this bill which he reviewed with the client. The client never informed Mr. Goichman otherwise.

It is significant that the prosecutor never called the doctor to the stand. It is not difficult when an attorney has a large clientele to find some disgruntled clients.

The Disciplinary Counsel in its brief (p. 24) states that Petitioner directed them to testify falsely in depositions. But the fact is that there was no evidence that Mr. Goichman when reviewing their case knew that the bill was false. The Lindsays, as their testimony, reveals, never told him.

This is another case where the Disciplinary Court reached unwarranted conclusions unsupported by the record.

Count VII. This count concerned the unauthorized prosecution of a claim for personal injuries. One Bobbie Coston was a driver and one Barbara Penn was a passenger.

The evidence indicated that an attorney named Laurence Ring, Esq. working in Mr. Goichman's office had sent a letter claiming he represented Barbara Penn (Sept. 24, 1974 NT. p. 120). Mr. Ring or someone other than Mr. Goichman had also talked to Barbara Penn on the telephone. (Sept. 25, 1974, p. 7). Mr. Ring had sent a letter to the insurance company dated June 16, 1969. (Sept. 24, 1974, NT. p. 120).

Mr. Ring had also sent a letter to Barbara Penn in which he said, "pursuant to our recent telephone conversation, etc." Sept. 23, 1974, NT. p. 59. The insurance company adjuster spoke to Mr. Ring on July 25, 1969. Sept. 24, 1974, p. 123. At that time Mr. Ring said he would try to obtain the medical reports. The insurance company addressed a letter to Mr. Ring , dated September 10, 1969. Sept. 24, 1974, NT p. 123.

Incidentally, all this evidence comes from the prosecutor's case. Mr. Goichman presented no evidence on any count since he did not believe that any case was established.

It was not until Sept. 18, 1969, that the insurance company learned that Mr. Goichman was taking over the case. Sept. 24, 1974, NT. p. 123.

The insurance company made a memorandum dated September 19, 1969, which stated that after discussions with both Mr. Ring and Mr. Goichman neither had any medical information on theclient. A memorandum dated October 15, 1969, by the insurance company, revealed

that Mr. Goichman admitted again he knew nothing about the medical treatment. On March 23, 1971, in anticipation of the S/L, Mr. Goichman filed a summons.

The insurance company by memorandum dated April 5, 1971, noted that "attorney showed little or no interest in the case." Sept. 24, 1974, N.T., p. 142.

The insurance company had closed its file previously and when it received the summons was interested in making a nominal settlement to avoid counsel fees. The insurance company offered Mr. Goichman $350 to settle the matter.

The insurance company also indicated that it had been told previously that a Dr. Hockstein had treated Barbara Penn, although no bill was ever presented. The insurance adjuster did not record to whom he spoke in getting this information. Sept. 24, 1969, N.T. p. 139.

The release for $350 was sent out to Barbara Penn and she admits signing it, Sept. 24, 1974, N.T. pp. 30, 33, but claims she was pressured into it. Sept. 24,

1974, N.T. pp.34-35.

In April 1971, Mr. Goichman received the settlement draft and contacted Mrs. Penn about distribution. They had a nasty argument and the settlement draft was not signed.

Mrs. Penn was asked: (Sept. 23, 1974, N.T., p. 74)

"Q. You testified at direct examination that you signed that release because you were upset and that you had been the victim of pressure from the respondent in the case, Mr. Goichman; is that correct?

A. That's right.

Q. You also realized you had not been to a doctor and if you released any claim you would be releasing a fraudulent claim. Isn't that true?

A. That's true."

Mrs. Penn shortly thereafter contacted the insurance company and informed it that she had no claim against it and it in turn stopped payment on the draft. The original draft was issued in April, 1971, and the insurance company stopped payment on August 4, 1971. Sept. 23, 1974 , N.T. p. 133. The

draft was never cashed. It was returned to the insurance company August 30, 1972 and no new draft was ever issued. Sept. 23, 1974, N.T., p. 135. In August 1972, the settlement draft was a "dead" piece of paper, having been terminated in August 1971.

The gist of the case boils down to a bit of confusion and misunderstanding. Those in Mr. Goichman's office who had dealt with the file believed that Barbara Penn was also making claim. Even if she never intended to make a claim, the fact that she willingly signed the release would have been a ratification. Tempers were responsible for the failure to consummate the settlement, rather than anything else.

The evidence shows that the persons in touch with Mrs. Penn and the insurance company during the first five months were assistants working for Mr. Goichman, and not Mr. Goichman himself.

When Mr. Goichman took over the file, it reasonably

seemed to him that the office was representing Mrs. Penn. There was no evidence as to who told the insurance company that Barbara Penn had had medical treatment and how much her bill was. In fact, no bill was ever submitted.

The insurance company confirmed the fact that when it spoke to Mr. Goichman he denied having any knowledge of her medical treatment.

Mr. Ring was not called as a witness, nor was anyone else from Mr. Goichman's office.

The most that can be said is that Mr. Goichman was confused by the file. The evidence rather convincingly demonstrates that Mrs. Penn had a passing interest in some claim. Even if Mr. Ring's letter of representation was without authorization, Mr. Goichman was not responsible for that. Furthermore , the fact that Mrs. Penn signed the Release would serve to ratify the representation post hac.

There was no evidence that Mr. Goichman had

submitted any medical bills or given any medical information.

The charges, therefore, that Mr. Goichman was guilty of prosecuting an unauthorized claim, and of submitting a fraudulent medical claim, like the other charges, were not proven or supported by the evidence.

Findings of a court seem to have an independent existence apart from the record or evidence which supports them. While the Disciplinary Court sustained all of the counts and the Pennsylvania Supreme Court, affirmed and approved, without opinion, all of the counts, the truth and fact remains that none was proven and there was , upon inspection, a very great dearth of proof.

C O N C L U S I O N

The cavalier manner in which the evidence was treated and the seriousness of the charges demonstrate the radical unfairness of the conviction. Justice cries for redress!

The unseemly and gross delay by the Court (not by the Bar or staff) cries out for correction, whether it be on "shocking the conscience" or on the ground of the parameters of the speedy trial clause.

Petitioner prays that this Court will not stand by and allow this miscarriage of justice to go uncorrected.

RESPECTFULLY SUBMITTED,

WILLIAM A. GOICHMAN
In Pro Per., Petitioner